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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2013-795*

12 **IAN SEAN SCHWARTZ**
13 **8465 Regents Road, #438**
San Diego, CA 92122

A C C U S A T I O N

14 **Registered Nurse License No. 628875**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about November 5, 2003, the Board of Registered Nursing issued Registered
23 Nurse License Number 628875 to Ian Sean Schwartz (Respondent). The Registered Nurse
24 License expired on July 31, 2011 and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with any terms of parole, probation,
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section
5 1203.4 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee.

7 **COST RECOVERY**

8 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Disciplinary Action by Another Health Care Agency – 16 Georgia Board of Nursing)**

17 13. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4), on
18 the grounds of unprofessional conduct in that Respondent was disciplined by the Georgia Board
19 of Nursing for failing to disclose a 2008 arrest for child pornography on his Georgia 2010-2012
20 renewal application, which discipline resulted in the voluntary surrender of Respondent's Georgia
21 Nursing License No. 117522 on or about January 18, 2012 in Georgia Board of Nursing Case
22 No. 2012-0141.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Disciplinary Action by Another Health Care Agency – 25 Oregon Board of Nursing)**

26 14. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4), on
27 the grounds of unprofessional conduct in that Respondent was disciplined by the Oregon Board of
28 Nursing for violation of Oregon Revised Statutes section 678.111(l)(a) (conviction of crime) and

1 (l)(h) (revocation or suspension of a license to practice nursing by any state or territory of the
2 United States or any foreign jurisdiction). The circumstances are as follows:

3 15. On or about February 14, 2012, the Oregon State Board of Nursing (Oregon Board)
4 received information that on or about January 18, 2012, Respondent voluntarily surrendered his
5 registered nurse license No. 117522 in State of Georgia, and that the Georgia Board of Nursing
6 accepted Respondent's voluntarily surrender after having been convicted of 10 counts of sexual
7 exploitation of children in *The State v. Ian Sean Schwartz*, in the Superior Court of Georgia,
8 County of Floyd, Case No. 09CR02524.

9 16. On or about May 16, 2012, the Oregon Board accepted Respondent's voluntary
10 surrender of his Oregon Registered Nurse License No. 200140038RN.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(August 18, 2011 Criminal Conviction for Sexual Exploitation of Children in 2008)**

13 17. Respondent is subject to disciplinary action under Code sections 490 and 2761,
14 subdivision (f), of the Code in that he was convicted of a crime substantially related to the
15 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

16 18. On or about August 18, 2011, in a criminal proceeding entitled *The State v. Sean*
17 *Schwartz*, in the Superior Court of Georgia, County of Floyd, in Case No. 09CR02524,
18 Respondent was convicted on his plea of guilty of violating Official Code of Georgia Annotated
19 (O.C.G.A.) section 16-12-100) (sexual exploitation of children), a felony. Pursuant to a plea
20 agreement, nine additional counts of violating Georgia Code O.C.G.A. 16-12-100, felonies, were
21 dismissed.

22 19. As a result of the conviction, the Court sentenced Respondent to serve five years in
23 state prison.

24 20. The circumstances that led to Respondent's conviction are that in 2008, authorities
25 found that Respondent knowingly possessed and controlled material depicting minors engaged in
26 sexually explicit conduct with other minors and with adults.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 628875 issued to Ian
5 Sean Schwartz;

6 2. Ordering Ian Sean Schwartz to pay the Board of Registered Nursing the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: MARCH 19, 2013

Stacie Ben

12 for LOUISE R. BAILEY, M.ED., RN
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant

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